

Derek J. Emge (CSB No. 161105)
 EMGE & ASSOCIATES
 550 West C Street, Ste. 1600
 San Diego, CA 92101
 Telephone (619) 595-1400
 Facsimile (619) 595-1480

Issa J. Michael (CSB No. 184256)
 THE MICHAEL LAW FIRM
 1648 Union St #201
 San Francisco, CA 94123
 Telephone (415) 447-2833
 Facsimile (415) 447-2834

Attorneys for Plaintiffs, JOSUE SOTO, GHAZI RASHID, MOHAMED ABDELFAH, On
 Behalf of All Aggrieved Employees, All Others Similarly Situated, and the General Public
 [Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSUE SOTO, GHAZI RAHID, MOHAMED	)	Case No. 08-CV-0033 L (AJB)
ABDELFAH, On Behalf of All Aggrieved)	
Employees, All Others Similarly Situated, and	)	<u>CLASS ACTION</u>
the General Public,)	
	)	PLAINTIFF'S NOTICE OF MOTION AND
Plaintiff,	)	MOTION TO DISMISS AMENDED
	)	COUNTERCLAIM AS TO JOSUE SOTO
v.	)	PURSUANT TO FED. R. CIV. P. 12(b)(6)
)	
DIAKON LOGISTICS (DELAWARE), INC., a	)	Date: July 21, 2008
foreign corp.; and DOES 1 through 50,	)	Time: 10:30 a.m.
inclusive,	)	Judge: Hon. M. James Lorenz
	)	Dpt: 14
Defendants.)	
	)	Original Complaint Filed: 12/5/2007
)	
AND ALL COUNTER-CLAIMS)	
)	

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 21, 2008 at 10:30 a.m., or as soon thereafter as
3 counsel may be heard in Courtroom 14 of the above-entitled Court, located at 880 Front Street, San
4 Diego, California, 92101, Plaintiff/Cross Defendant JOSUE SOTO will, and hereby does, move
5 this Court to dismiss Defendant's amended counterclaim for failure to state a claim upon which
6 relief can be granted (Federal Rule of Civil Procedure 12(b)(6).

7 This motion is based on this Notice of Motion and Motion, the accompanying
8 Memorandum of Points and Authorities, all matters in the Court's file, other matters of which this
9 Court may take judicial notice, and any other oral and documentary evidence and argument as may
10 be presented prior to, or at the hearing of, this motion.

11 DATED: May 29, 2008

EMGE & ASSOCIATES

12 s/ Derek J. Emge
13 DEREK J. EMGE
14 550 West "C" Street, Suite 1600
San Diego, CA 92101

15 LAW OFFICE OF TODD J. HILTS
16 Todd J. Hilts
2214 2nd Ave
17 San Diego, CA 92101

18 LAW OFFICES OF DAVID A. HUCH
19 David A. Huch
7040 Avenida Encinas, Suite 104
20 Carlsbad, CA 92011

21 THE MICHAEL LAW FIRM
22 Issa J. Michael
1648 Union St #201
23 San Francisco, CA 94123

24 Attorneys for Plaintiff, JOSUE SOTO,
25 GHAZI RAHID, MOHAMED
26 ABDELFAHATTAH, On Behalf of All
27 Aggrieved Employees, All Others Similarly
28 Situated, and the General Public